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TO: Commissioner for Patents, Examiner Chivonne Laurie Evans - United States Patent and Trademark Office

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Application No.: 10/790,418

Inventor(s): Paolo Veglio

Filed: March 1, 2004

Docket No.: 9562

Confirmation No.: 1478

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- 1) Appeal Brief in response to Office Action mailed on January 17, 2006 (12 pages)

Number of Pages Including this Page: 13

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application No. : 10/790,418
Inventor(s) : Paolo Veglio
Filed : March 1, 2004
Art Unit : 3761
Examiner : Chivonne Laurie Evans
Docket No. : 9562
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APPEAL BRIEF

Mail Stop Appeal Brief - Patents
Commissioner for Patents
P. O. Box 1450
Alexandria, VA 22313-1450

This Brief is filed pursuant to the appeal from the decision communicated in the Office Action mailed on January 17, 2006.

A timely Notice of Appeal was filed on April 18, 2006.

REAL PARTY IN INTEREST

The real party in interest is The Procter & Gamble Company of Cincinnati, Ohio.

RELATED APPEALS AND INTERFERENCES

There are no known related appeals, interferences, or judicial proceedings.

STATUS OF CLAIMS

Claims 1 to 20 are pending.

Claims 1-14 and 16-20 stand rejected.

Claim 15 is objected to for improper indication of dependency, and an appropriate amendment is made herein.

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Claim 19 is objected to for improper indication of dependency, and an appropriate amendment is made herein.

Claims 1-14 and 16-20 are appealed.

Appellants submit Claim 15 as amended herein is allowable, and request a prompt notice of allowance.

A complete copy of the appealed claims is set forth in the Claims Appendix attached herein.

STATUS OF AMENDMENTS

An amendment was filed on October 20, 2005 to distinguish the claimed sanitary napkin over the articles disclosed in the cited prior art. The amendment was entered and was successful in removing a rejection under 35 USC §102. Claims 1-14 and 16-20 remain rejected under 35 USC §103. Additionally, Claims 15 and 19 are objected to for informalities corrected herein.

SUMMARY OF CLAIMED SUBJECT MATTER

The invention of independent Claim 1 is directed to a sanitary napkin (10) having a body-facing side (15) that is in contact with the user's body when in use, and a garment-facing side (17) that is in contact with the user's undergarment when in use. (Page 3, lines 4-15). The garment-facing side (17) has pressure sensitive adhesive for affixing the sanitary napkin (10) a wearer's undergarment.

The sanitary napkin (10) comprises a fluid permeable topsheet (26), a fluid permeable backsheet (22), and an absorbent core (20) disposed therebetween. (Page 3, line 24, page 4, lines 19, 32). The absorbent core (20) comprises relatively hydrophilic material and the shape of the absorbent core (20) defines a core outer periphery (30) (Page 4, line 14). The topsheet (26) and said backsheet (22) comprise relatively hydrophobic nonwoven material, at least one of either the topsheet (26) and backsheet (22) defines a sanitary napkin outer periphery (28) that is substantially larger than said core outer periphery (30) (Page 5, lines 23-25). The area between the core outer periphery (30) and said sanitary napkin outer periphery (28) is a breathable zone (32) (Page 5, lines 27-29).

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The invention of independent Claim 18 is similar to that of Claim 1, additionally wherein the absorbent core (20) is hydrophilic airlaid nonwoven material having fibrous AGM (absorbent gelling material in fiber form) (Page 4, line 5). Further, the breathable zone (32) completely surrounds the core outer periphery (30). Further, the invention of Claim 18 has a fluid impermeable barrier adjacent to the absorbent core, and within the absorbent core outer periphery (30) (See, page 5, lines 16-22).

The invention of independent Claim 20 is similar to that of Claim 18; however, it is directed to a thin pantiliner, which is a different article than a sanitary napkin. Further, the amounts of fibrous AGM are claimed, and the fluid impermeable barrier is a polyethylene film.

GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

Claims 1-5, 7-8, 11-14 are rejected under 35 USC §103(a) as being unpatentable over Dobrin (US 5,843,066).

Claims 6, 10, and 16-19 are rejected under 35 USC §103(a) as being unpatentable over Dobrin (US 5,843,066) in view of Ahr (U.S. 5,800,418).

Claim 20 is rejected under 35 USC §103(a) as being unpatentable over Dobrin (US 5,843,066) in view of Ahr (U.S. 5,800,418) as applied to Claims 6, 10, and 16-19, and further in view of Melius (U.S. 6,646,179).

ARGUMENTS

Claims 1-5, 7-8, 11-14 are rejected under 35 USC §103(a) as being unpatentable over Dobrin (US 5,843,066).

Claim 1:

Appellants respectfully submit the Examiner has failed to make a *prima facie* case of obviousness for Claim 1. See, MPEP 2143. Specifically, the Examiner has failed to explain why it would be obvious to modify the garment of Dobrin which as a front waist region and a rear waist region to be a sanitary napkin having a pressure sensitive adhesive for affixing the sanitary napkin to a wearer's undergarment, as claimed in the present invention.

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Appellants agree and understand that Dobrin discloses in a broad sense an invention "applicable to other absorbent articles" and specifically identifies garments such as "feminine hygiene garments" (Dobrin, column 2, lines 64-67). However, Dobrin describes garments having a front waist region and a rear waist region, as well as crotch region. The front and rear waist regions are intended to wrap the waist of the wearer for support to remain on the body when worn. Therefore, whatever "feminine hygiene garments" Dobrin had in mind, they must have been garments intended to be worn about the waist, as this is the only type of garment disclosed by Dobrin. For example, the "feminine hygiene garments" Dobrin discloses could be "incontinence briefs" or other type products denoted as "and the like" (*Ibid.*).

Moreover, Dobrin makes no mention of any type of article that requires adhesively affixing to an additional garment, and, therefore Dobrin describes no garment that would benefit from an adhesive attachment to the garment-facing side. Because there is no teaching in Dobrin of any kind of garment to be worn inside a wearer's panties, Appellants submit there is no suggestion in Dobrin to modify the diaper disclosed to have adhesive on a garment facing side thereof, as claimed in Claim 1.

Appellants respectfully submit that the Examiner has failed to propose any explanation for why, in accordance with the standard set forth in *Graham v. John Deere Company* 383 US 1, 148 USPQ 459 (1966), explained in MPEP Section 706, one would be motivated to modify the baby diaper or feminine hygiene garment of Dobrin, which explicitly does not require or benefit from adhesive on the garment-facing side of the backsheet, to be a sanitary napkin as claimed. There is simply no suggestion or motivation in Dobrin to make the required modifications.

The Examiner stated that Ahr (US 5,800,418) provides the suggestion to modify Dobrin. However, Ahr simply confirms that there is no need to put any adhesive on the backsheet of the diaper of Dobrin. Ahr discloses both diapers and sanitary napkins, and makes very clear that attachment adhesive on the backsheet is only necessary on sanitary napkins (column 27, lines 46-61). Ahr provides no suggestion or motivation to modify the diaper disclosed by Ahr to have pressure-sensitive adhesive applied to the backsheet thereof. Therefore, the skilled person looking at Ahr would not be motivated to apply an attachment adhesive to the diaper of Dobrin. Such a modification is not only unnecessary, it would be highly undesirable on any garment intended to be secured about the waist of the wearer, and therefore having a front waist region and a rear waist region.

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In this case, the Examiner has provided no basis for a proposed modification of the garment of Dobrin having a front waist region and a rear waist region to be modified by any of the disclosure of Ahr that might relate to sanitary napkins. What is missing is any reason in Dobrin, for example, of the desirability to be modified to have adhesive on the garment-facing side of the backsheet. Such a modification is unnecessary in a garment having a front waist region and a rear waist region intended (as in Dobrin) to be secured about the waist of the wearer.

Accordingly, unless sanitary napkins are considered by the Board to have a "front waist region" and a "rear waist region" as disclosed in Dobrin, the Appellants respectfully request that the 35 USC §103 rejection of Claim 1 as being obvious over Dobrin be withdrawn.

Claims 2-5, 7-8, 11-14:

For the same reasons as discussed above, Appellants also request withdrawal of the 35 USC §103 rejection of Claims 2-5, 7-8, 11-14, which depend from Claim 1.

Claims 6, 10, and 16-19 are rejected under 35 USC §103(a) as being unpatentable over Dobrin (US 5,843,066) in view of Ahr (5,800,418).

Claims 6, 10, and 16-17:

For the reasons discussed above with respect to Claim 1, from which Claims 6, 10, 16 and 17 depend, Appellants respectfully request withdrawal of the rejection under 35 USC §103 over Dobrin (US 5,843,066) in view of Ahr (5,800,418).

Claims 18 and 19:

The rejection does not show where in Dobrin or Ahr, either singly or in combination, is found any teaching of: (1) an absorbent core comprising an airlaid nonwoven material "having fibrous AGM"; and, (2) "a breathable zone that completely surrounds the core outer periphery" as claimed in Claim 18.

The Examiner has not indicated where in Dobrin is found any disclosure of "fibrous AGM." The disclosure in Dobrin appears to be limited to particulate AGM in a fiber matrix. Particulate AGM in a fibrous matrix is not the same thing as "fibrous AGM," as anyone skilled in

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the art will know. The distinction is made in the present application at page 4, lines 5-6, 8 and 12.

The addition of Ahr does not remedy the shortcoming of Dobrin in failing to disclose fibrous AGM. The Examiner has not shown where in Ahr can be found any disclosure of fibrous AGM, much less any motivation to modify Dobrin to include fibrous AGM.

Additionally, Dobrin teaches at column 8, lines 2-3 that the inner layer 90 is "longitudinally coterminous with (i.e., the same length as) the diaper 20." It is, therefore, impossible for Claim 18 to read on the structure of Dobrin. The Examiner has pointed to no suggestion in Dobrin or in Ahr to shorten the inner layer 90 of Dobrin.

Accordingly, because Dobrin and Ahr fail to disclose all the limitations of Claim 18, and the Examiner has provided no basis for why one skilled in the art might make the necessary modifications to achieve the claimed invention, the Appellants respectfully submit the Examiner has failed to establish a *prima facie* case of obviousness for Claim 18.

Appellants respectfully submit that even if all the claim limitations were present, the rejection of Claim 18 is based on impermissible hindsight, and request that the 35 USC §103 rejection be withdrawn.

For the reasons provided for Claim 18, Appellants respectfully submit that Claim 19 is likewise allowable as depending from Claim 18. (Claim 19 will be amended upon favorable indication of allowable subject matter to properly depend from Claim 18).

Rejection Under 35 USC §103(a) Over Dobrin, US 5,843,066 in view of Ahr, US 5,800,418, and further in view of Melius, US 6,646,179.

Claim 20:

For the reasons above with respect to Claim 1 and Claim 18 above, Appellants respectfully request withdrawal of the rejection under 35 USC §103 of Claim 20.

Specifically, regardless of any disclosure in Melius, it has been shown above that neither Dobrin nor Ahr, either singly or in combination teach or disclose (1) an absorbent core comprising an airlaid nonwoven material "having fibrous AGM"; and, (2) "a breathable zone that completely surrounds the core outer periphery" as claimed in Claim 20. The addition of Melius fails to remedy the shortcomings of Dobrin and Ahr.

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Accordingly, because Dobrin and Ahr and Melius fail to disclose all the limitations of Claim 20, and the Examiner has provided no basis for why one skilled in the art might make the necessary modifications to achieve the claimed invention, the Appellants respectfully submit the Examiner has failed to establish a *prima facie* case of obviousness for Claim 20.

Appellants respectfully submit that even if all the claim limitations were present, the rejection of Claim 20 is based on impermissible hindsight, and request that the 35 USC §103 rejection be withdrawn.

SUMMARY

In view of all of the above, it is respectfully submitted that Claim 15 be permitted to proceed to allowance, and that the rejections of Claims 1-14 and 16-20 be withdrawn.

Respectfully submitted,
THE PROCTER & GAMBLE COMPANY



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CLAIMS APPENDIX

1. (Previously presented) A sanitary napkin having a body-facing side and a garment-facing side, the sanitary napkin comprising a fluid permeable topsheet, a fluid permeable backsheet, and an absorbent core disposed therebetween, wherein:
 - a. said absorbent core comprises relatively hydrophilic material defining a core outer periphery;
 - b. said topsheet and said backsheet comprise relatively hydrophobic nonwoven material, at least one of said topsheet and said backsheet defining a sanitary napkin outer periphery that is substantially larger than said core outer periphery, the area between said core outer periphery and said sanitary napkin outer periphery being a breathable zone;
 - c. said sanitary napkin further comprising a fluid impermeable barrier between said backsheet and said absorbent core, said fluid impermeable barrier being disposed within said core outer periphery, and
 - d. wherein said garment-facing side has thereon pressure sensitive adhesive for affixing to a wearer's undergarment.
2. (Original) The sanitary napkin of Claim 1, wherein at least one of said topsheet and said backsheet has sufficient hydrophobicity as to be rendered fluid repellent.
3. (Original) The sanitary napkin of Claim 1, wherein said topsheet and said backsheet have a common outer periphery.
4. (Original) The sanitary napkin of Claim 1, wherein the periphery of said fluid impermeable layer coincides with said core outer periphery.
5. (Original) The sanitary napkin of Claim 1, wherein said topsheet and said core are joined by mechanical entangling of a portion of their respective fibers.
6. (Original) The sanitary napkin of Claim 1, wherein said core outer periphery defines a generally oval shape.
7. (Original) The sanitary napkin of Claim 1, wherein said sanitary napkin periphery defines a generally hour-glass shape.

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8. (Original) The sanitary napkin of Claim 1, wherein said fluid impermeable barrier is a polymer film layer.
9. (Original) The sanitary napkin of Claim 8, wherein said topsheet and said absorbent core are embossed to expose and entangle fibers from said core with said topsheet.
10. (Original) The sanitary napkin of Claim 1, wherein said topsheet comprises a spunbonded nonwoven web.
11. (Original) The sanitary napkin of Claim 10, wherein said topsheet comprises bicomponent fibers.
12. (Original) The sanitary napkin of Claim 1, wherein said backsheet comprises a spunbonded nonwoven web.
13. (Original) The sanitary napkin of Claim 12, wherein said backsheet comprises polypropylene fibers.
14. (Original) The sanitary napkin of Claim 1, wherein said absorbent core comprises superabsorbent material.
15. (Currently amended) The sanitary napkin of Claim [[15]] 14, wherein said superabsorbent material comprises superabsorbent fibers.
16. (Original) The sanitary napkin of Claim 1, wherein said core comprises a carded airlaid web.
17. (Original) The sanitary napkin of Claim 1, wherein said sanitary napkin is a pantiliner.
18. (Original) A sanitary napkin comprising a fluid permeable topsheet, a fluid permeable backsheet, and an absorbent core disposed therebetween, wherein,
 - a. said absorbent core comprises relatively hydrophilic airlaid nonwoven material having fibrous AGM and defining a core outer periphery;
 - b. said topsheet and said backsheet comprise relatively hydrophobic spunbonded nonwoven material, said topsheet and said backsheet defining a sanitary napkin outer periphery that is larger than said core outer periphery, the area between said core outer periphery and said sanitary napkin outer periphery being a breathable zone that completely surrounds the core outer periphery, such that vapors can permeate completely through said sanitary napkin in said breathable zone;

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- c. said sanitary napkin further comprising a fluid impermeable barrier between said backsheet and said absorbent core, said fluid impermeable barrier being disposed adjacent to said absorbent core and within said core outer periphery.
19. (Currently amended) The sanitary napkin of Claim 18, wherein said sanitary napkin is a pantiliner.
20. (Original) A thin absorbent pantiliner comprising a fluid permeable topsheet, a fluid permeable backsheet, and an absorbent core disposed therebetween, wherein,
a. said absorbent core has a basis weight of between about 50 gsm and 100 gsm, said absorbent core comprising relatively hydrophilic airlaid nonwoven material having at least about 5 wt % AGM fiber content and defining a core outer periphery;
b. said topsheet and said backsheet comprise relatively hydrophobic fluid repellent spunbonded nonwoven material, said topsheet and said backsheet defining a pantiliner outer periphery that is larger than said core outer periphery, the area between said core outer periphery and said pantiliner outer periphery being a breathable zone that completely surrounds the core outer periphery, such that vapors can permeate completely through said pantiliner in said breathable zone;
c. said sanitary napkin further comprising a liquid impermeable barrier between said backsheet and said absorbent core, said fluid impermeable barrier being a polyethylene film disposed adjacent to said core and within said core outer periphery.

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EVIDENCE APPENDIX

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RELATED PROCEEDINGS APPENDIX